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THE TREATY RELATIONS OF THE UNITED STATES AND COLOMBIA

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The relations of the United States and Colombia have been largely concerned with questions relating to the isthmus of Panama. The first treaty by which the United States acquired rights and assumed obligations in regard to the isthmus was that signed with New Granada (now the republic of Colombia) in 1846 and ratified in 1848. The thirty-fifth article of this treaty contains the following important provisions: (1) "The government of New Granada guarantees to the government of the United States that the right of way or transit across the isthmus of Panama upon any modes of communication that now exist, or that may be hereafter constructed, shall be open and free to the government and citizens of the United States, and for the transportation of any articles of produce, manufactures or merchandise, of lawful commerce, belonging to the citizens of the United States," upon the same terms as shall be enjoyed by Granadian citizens. (2) "The United States guarantee, positively and efficaciously, to New Granada, by the present stipulation, the perfect neutrality of the before-mentioned isthmus, with the view that the free transit from the one to the other sea may not be interrupted or embarrassed in any future time while this treaty exists." (3) "The United States also guarantee, in the same manner, the right of sovereignty and property which New Granada has and possesses over the said territory."

This treaty was to remain in full force for a period of twenty years and was not to be terminated then or at any time thereafter without twelve months' notice from one of the parties. Relying upon its guaranties the Panama Railroad Company, composed mainly of citizens of the United States, obtained a concession from the government of New Granada and between the years 1850 and 1855 constructed a railroad across the isthmus from Colon to Panama.

The terms of this treaty were first invoked by the United States

in support of the claims of its citizens who suffered personal injury and loss of property in the Panama riot of 1856. On April 15 of that year a party of about nine hundred and fifty passengers, including many women and children, had just been carried over from Colon to Panama *en route* for California, when a quarrel arose between a drunken passenger and a negro, who kept a provision stand, over the price of a slice of watermelon. A general riot ensued, in which the police joined the natives in their attack upon the Americans. When order was finally restored it was found that about twenty persons had been killed and twenty-nine wounded. Most of the killed and about half the wounded were Americans. The claims for property destroyed amounted to about half a million. In view of the inability of the Granadian government to afford adequate protection to the transit route, the United States sent two special ministers to Bogota with the draft of a new treaty. This draft provided for the payment of a lump sum, the amount to be determined by mutual agreement, in satisfaction of the claims growing out of the riot of April 15. The more important features of the treaty, however, were those which provided for the creation of a belt of territory twenty miles broad along the line of the railroad from ocean to ocean. New Granada was to retain her sovereignty over this belt, but it was to be under the direct control of two self-governing municipalities, one at the Atlantic and the other at the Pacific terminus of the road. It was further proposed that the United States should acquire control of certain islands in the harbors at each terminus as naval stations. These proposals were rejected by New Granada.¹

The subject of a new treaty was then dropped and the question of indemnity for the unfortunate occurrences of April 15 was urged upon the attention of the New Granadian government. These negotiations were finally transferred to Washington and resulted in the convention signed by General Herran and Mr. Cass, September 10, 1857, by the first article of which New Granada acknowledged her liability. This article is, in part, as follows:

"All claims on the part of corporations, companies or individuals, citizens of the United States, upon the government of New Granada, which shall have been presented prior to the first day of September, 1859, either to the Department of State at Washington, or to the minister of the United States at Bogota, and especially

¹ Correspondence in relation to the Proposed Interoceanic Canal, etc., 23.

those for damages which were caused by the riot at Panama on the fifteenth of April, 1856, for which the said government of New Granada acknowledges its liability, arising out of its privilege and obligation to preserve peace and good order along the transit route, shall be referred to a board of commissioners, consisting of two members, one of whom shall be appointed by the government of the United States and one by the government of New Granada." The commissioners were to appoint an arbitrator or umpire to decide upon cases on which they differed in opinion.

The government of New Granada delayed ratifying this convention until the delay called forth an emphatic remonstrance from Mr. Cass. In a note to General Herran, dated June 4, 1858, he said: "When the negotiations for the settlement of the difficulties between our respective countries were brought to a close by the conclusion of a treaty on the tenth of September last, it was the confident expectation of this government that the treaty would be ratified by New Granada without delay or objection. The arrangement was not entirely satisfactory to the United States, for it left unadjusted several subjects of difference, some of them of much importance, arising out of the transit route and out of the measures in relation to it proposed to be adopted by your government. . . . I informed you at the commencement of the discussion between us that the recognition by your government of its responsibility for those aggressions at Panama and an arrangement for their satisfaction were considered by the United States indispensable to the success of our negotiations."

On August 16, 1858, General Herran informed Mr. Cass that the convention had been ratified by his government with certain modifications and with the following explanation as to the effect of acknowledging liability for the riot at Panama: "It is understood that the obligation of New Granada to maintain peace and good order on the interoceanic route of the isthmus of Panama, of which Article 1 of the convention speaks, is the same by which all nations are held to preserve peace and order within their territories, in conformity with general principles of the law of nations and of the public treaties which they have concluded." The object of this "explanation," it appears from General Herran's note of the same date, which was itself somewhat ambiguous, was to guard against the establishment of this case as a precedent or the interpretation of the convention as

creating a new obligation. He says in this connection: "The convention was framed for a determinate object. This being attained, the instrument will, *ipso facto*, stand annulled, as is the case with treaties, from the moment that the period of their duration has terminated. It could not, therefore, contain a stipulation, granted in general terms, applicable to all such cases as might occur and the duration of which would have to be unlimited."

The convention was ratified by the United States Senate in March, 1859, with the acceptance of this explanation and with some other minor amendments and immediately sent to General Herran. A few days later he brought up the subject of certain grievances which the government of New Granada had against the United States arising out of the alleged non-payment of tonnage and mail taxes. Mr. Cass replied, under date of March 31: "I have simply to repeat the substance of what has been stated to you in our personal conferences, that, until the convention of September, 1857, has been ratified by New Granada, this government is not prepared to enter upon any further discussion in reference to the various points mentioned in your note." After still further delay on the part of New Granada and an extension of time by the United States Senate, the ratifications were finally exchanged November 5, 1860.

When the commission had been organized under this convention and was ready to proceed to the adjudication of claims, Mr. James M. Carlisle, the agent of the Granadian government, offered to submit evidence to show that damages were inadmissible. He contended that the admission of liability on the part of New Granada in the first article was merely an admission of liability to have claims made against her and not of liability for damages. This question was referred to the umpire, who decided that the liability of New Granada was fully admitted by Article 1, and could not be raised before the commission. They then proceeded to pass upon the claims presented, and when the time for the legal expiration of the commission arrived, March 9, 1862, over one hundred cases remained undecided. An effort was made by the United States to have the time extended, but the Colombian minister had no authority to grant an extension and there was no way of postponing the legal expiration of the commission. After nearly two years' delay, occasioned in part by revolutionary outbreaks in Colombia, a supplemental convention was signed February 10, 1864, the ratifications of which were exchanged

August 19, 1865, providing for the reorganization and continuance of the commission for a period of nine months from the exchange of ratifications. The sum total of the awards made by the commission under the convention of 1857 was nearly \$500,000. The awards under the supplemental convention of 1864 amounted to something over \$85,000.²

In 1862 the Granadian government, through its representative at Washington, notified the United States that a revolutionary chief, who was then trying to subvert the Granadian confederation, had sent an armed force to occupy the isthmus of Panama, and called upon the United States to enforce its guaranty. Simultaneously the same information was received from the United States consul at Panama, and the President instructed the United States naval commander at that port to protect at all hazards and at whatever cost the safety of the railroad transit across the isthmus. The Granadian government, however, was not satisfied with this action, and urged the United States to land a body of troops at Panama, suggesting that it consist of three hundred cavalry. In view of the critical situation in which the United States government found itself by reason of the civil war, President Lincoln hesitated to take such action without consulting Great Britain and France, and accordingly Mr. Seward instructed our representatives at London and Paris to seek an understanding with those governments on this subject. He declared: "This government has no interest in the matter different from that of other maritime powers. It is willing to interpose its aid in execution of its treaty and for the benefit of all nations. But if it should do so, it would incur some hazard of becoming involved in the revolutionary strife which is going on in that country. It would also incur danger of misapprehension of its objects by other maritime powers if it should act without previous consultation with them." The points upon which he wished to sound England and France were: "First, whether any proceeding in the matter shall be adopted by the United States, with the assent and acquiescence of the British and French governments. Secondly, what should be the force and extent of the aid to be rendered to the Granadian confederation. Thirdly, whether these governments will unite with the United States in guaranteeing the safety of the transit under the authority of the Granadian confederation, or either of these objects, and the form

² Moore's "International Arbitrations," 1361-1420.

and manner in which the parties shall carry out such agreement." In a conference between Mr. Adams and Lord John Russell, the latter declared that he did not consider that the contingency had arisen which called for intervention; that so far as he could learn no attempt had been made to obstruct the free transit across the isthmus. The French government took substantially the same view.³

The publication of these dispatches in the volume of Diplomatic Correspondence transmitted with the President's message of December 1, 1862, drew from Mexico a protest against the position taken by the United States in inviting the co-operation of European powers in the affairs of America. In a note to Mr. Seward dated March 19, 1863, Mr. Romero reminded him of the sufferings Mexico was then undergoing as a consequence of European intervention, and added: "In the opinion of the government of Mexico, the result could have been none other than that of a European intervention, if the proposal which the United States made in June last to the cabinets of St. James and the Tuilleries to send land forces to the isthmus of Panama, with a view of protecting the neutrality of the isthmus, had been accepted by the governments of Great Britain and France." In his reply Mr. Seward declared that the United States was in sympathy with the views expressed by the Mexican government, and he expressed his regret that the character of the correspondence in question had been misapprehended.⁴

In 1864, during the war between Spain and Peru, it was feared that Spain might insist on sending troops and munitions of war across the isthmus. Colombia notified the United States that in such an event she would call upon the United States to intervene. Fortunately the necessity did not arise, but the Attorney-General expressed the opinion that according to the terms of the treaty such intervention would be obligatory. The following year the question arose as to the obligation of the United States to protect the isthmus against invasion by insurgents. To a request from Colombia for troops Mr. Seward replied in a dispatch to Mr. Burton, dated November 9, 1865: "The purpose of the stipulation (contained in the thirty-fifth article of the treaty of 1846-48) was to guarantee the isthmus against seizure or invasion by a foreign power only. It could not have been contemplated that we were to become a party to any

³ Dip. Cor., 1862, 131, 162, 380.

⁴ Dip. Cor., 1863, 1150.

civil war in that country by defending the isthmus against another party. As it may be presumed, however, that our object in entering into such a stipulation was to secure the freedom of transit across the isthmus, if that freedom should be endangered or obstructed, the employment of force on our part to prevent this would be a question of grave expediency to be determined by circumstances. The department is not aware that there is yet occasion for a decision upon this point.”⁵

The question as to the right of the United States to land troops on the isthmus without first obtaining the consent of the Colombian government was raised rather unexpectedly in 1865. In September of that year, Rear-Admiral Pearson landed some marines and a band from his flag-ship at Panama, without asking permission of the local authorities, for the purpose of rendering the customary naval honors to the remains of Alexander McKee, late consul of the United States at Panama. Two days later the president of the state of Panama addressed a note to Rear-Admiral Pearson, in which he protested against this act and added: “I expect, therefore, that in case it shall be necessary to disembark armed naval forces in future, it will not be done without the consent of the authorities in this place, which represent the sovereignty and independence of the nation.” Rear-Admiral Pearson replied, taking exception to the views presented by the president of Panama and entering upon a discussion of the treaty. The government of Colombia took the matter up at this point and addressed a note to the minister of the United States resident at Bogota, in which were set forth the views of that government as to the meaning of the treaty. Mr. Seward reviewed the whole controversy in his dispatch of April 30, 1866. As neither the president of Panama nor Rear-Admiral Pearson was vested with diplomatic powers, Mr. Seward held the view that the whole correspondence was out of place. He admitted that Admiral Pearson should have asked permission, but held that, in view of the friendly relations existing between the two countries, the criticisms passed upon his neglect to do so were uncalled for. He refused to discuss the main point at issue, that is, the right to land troops without the consent or permission of Colombia, and added: “A government cannot justly be expected to give explanations and guaranties in regard to the course it will adopt in hypothetical cases, where it has neither itself

⁵ Wharton's “Digest,” sect. 145.

done, nor suffered its agents to do, any act which implies a want of fidelity to its treaties and other international obligations.”⁶

In view of the continuance of disturbances on the isthmus, Mr. Seward again found it necessary to define the position of his government. In a dispatch to Mr. Burton, October 9, 1866, he said: “The United States have always abstained from any connection with questions of internal revolution in the state of Panama, or any other of the states of the United States of Colombia, and will continue to maintain a perfect neutrality in such domestic controversies. In the case, however, that the transit trade across the isthmus should suffer from an invasion from either domestic or foreign disturbances of the peace in the state of Panama, the United States will hold themselves ready to protect the same.”⁷

The treaty of 1846-48 did not provide specifically for a canal. In 1868 a discussion of the isthmian question was again opened by the United States, and Mr. Caleb Cushing was sent as a special agent to Bogota to assist Mr. Sullivan, the minister resident at that capital, in the negotiation of a canal treaty. As a result, a treaty was concluded at Bogota, January 14, 1869, providing for the cession of a strip of territory for a period of one hundred years and for the construction of a ship canal by the United States either directly or by a corporation chartered for the purpose. This treaty failed of ratification in the United States Senate. In January, 1870, a second treaty, somewhat similar in terms, was negotiated by Mr. Hurlbut, United States minister at Bogota. This treaty was so modified by Colombia that it was finally rejected by the United States.⁸

A discussion with the Colombian minister at Washington as to whether the treaty of 1846 was still in force was raised by Secretary Fish in 1871, based on the ground that General Salgar had proposed certain changes in 1867 and that this declaration of intention to modify the treaty acted as a notice of termination. It does not appear from the correspondence that Mr. Fish had any very serious intention of abrogating the treaty. In fact he seems to have raised the point merely to meet certain demands of the Colombian government in the matter of shipping privileges claimed under the treaty. In his note of May 27, 1871, however, Mr. Fish acknowledged the treaty

⁶Dip. Cor., 1866, III, 459, 526.

⁷Dip. Cor., 1866, III, 581.

⁸Correspondence in relation to the Proposed Interoceanic Canal, etc., 36, 61.

as being in force. He said: "Although literally and technically, pursuant to the clause of the thirty-fifth article of that instrument upon the subject, this government might hold that the application made by General Salgar for a revision of the treaty in anticipation of a lapse of the time for its termination might be held to have brought about that result, the intentions of the parties at the time may, as you observe, be allowed to govern the question. General Salgar in his notice did not say that if his proposition should not be accepted the Colombian government would regard the treaty as at an end, and Mr. Seward does not appear to have received that proposition as a formal notice of termination. His silence upon the subject may be fairly construed as indicative of an opinion on his part that, so far as the interests of the United States were concerned, no change in the treaty was required, and the form of the application of Colombia may also be construed to imply that, although she might prefer the changes proposed in that application, she did not regard them as indispensable to its continuance. Under these circumstances it may be said to comport with the interests of both parties to look upon the treaty as still in full force, but as subject to revision or termination in the form and upon the terms stipulated."⁹

In September, 1873, during one of the insurrections so common in Colombia, the transit suffered interference at the hands of insurgents. The Colombian authorities were called upon by the railroad company to render assistance, but owing to their inability to control the situation, United States marines were landed from the *Pensacola* at Colon and from the *Wyoming* at Panama. In his dispatch of October 29, 1873, Mr. Fish deprecated this necessity and outlined his position as follows: "By the treaty with New Granada of 1846 this government has engaged to guarantee the neutrality of the isthmus of Panama. This engagement, however, has never been acknowledged to embrace the duty of protecting the road across it from the violence of local factions; but it is regarded as the undoubted duty of the Colombian government to protect it against attacks from local insurgents."¹⁰

The question as to the right of the United States to convey criminals across the isthmus under the terms of the treaty of 1846 was raised in 1878-79. After considerable discussion this matter

⁹For. Rel., 1871, 243, 249.

¹⁰For. Rel., 1874, 363.

was settled by a special protocol, which provided for the joint custody of criminals in transit.¹¹

In the eighth article of the Clayton-Bulwer treaty of 1850, the United States and England had committed themselves unequivocally to the principle of neutralization for any canal that might be at any time constructed across the isthmus at any point. The interpretation of certain clauses of this treaty was a matter of serious difference of opinion for several years. After the adjustments of 1860, however, the obligatory force of that treaty was not seriously questioned until interest in the canal was suddenly aroused by the Wyse concession of 1878 and the subsequent organization of a French construction company under the presidency of Ferdinand de Lesseps. The prospect of the speedy construction of a canal under French control produced a sudden and radical change of policy on the part of the United States. In a special message to Congress, March 8, 1880, President Hayes declared that the policy of this country was a canal under American control. He explained the reasons for this statement in the following language: "The capital invested by corporations or citizens of other countries in such an enterprise must, in a great degree, look for protection to one or more of the great powers of the world. No European power can intervene for such protection without adopting measures on this continent which the United States would deem wholly inadmissible. If the protection of the United States is relied upon, the United States must exercise such control as will enable this country to protect its national interests and maintain the rights of those whose private capital is embarked in the work."¹²

This message was accompanied by a report from the Secretary of State, Mr. Evarts, in which he called attention to the mutual engagements entered into between the United States and Colombia by the treaty of 1846 in reference to the transit route across the isthmus and declared that the guaranty of the neutrality of the isthmus and of the sovereignty of Colombia over the same would be a very different thing when the isthmus should be open to the interests and ambitions of the great commercial nations.¹³

President Garfield, in his inaugural address, approved the posi-

¹¹ For. Rel., 1879, 251, 271, 287. For. Rel., 1880, 319, 322.

¹² "Messages and Papers of the Presidents," VII, 585.

¹³ Correspondence in relation to the Proposed Interoceanic Canal, etc., 313.

tion taken by his predecessor on this question, and very soon after assuming the portfolio of state, Mr. Blaine outlined the new policy in a circular dispatch to our representatives in Europe, cautioning them, however, against representing it as the development of a new policy and affirming that it was "nothing more than the pronounced adherence of the United States to principles long since enunciated by the highest authority of the government." He also called attention to the rights and duties devolving upon the United States from the treaty with Colombia of 1846, and stated that in the judgment of the President the guaranty there given by the United States did not require reinforcement, or accession, or assent, from any other power; that the United States in more than one instance had been called upon to vindicate the neutrality thus guaranteed; and that there was no contingency, then foreseen or apprehended, in which such vindication would not be within the power of this nation. Mr. Blaine further declared with emphasis that during any war to which the United States of America or the United States of Colombia might be a party, the passage of armed vessels of a hostile nation through the canal of Panama would be no more admissible than would the passage of armed forces of a hostile nation over the railway lines joining the Atlantic and Pacific shores of the United States, or of Colombia.¹⁴

With the long controversy that ensued between England and the United States as to the binding force of the Clayton-Bulwer treaty we are not here directly concerned. The French government, however, assured the United States upon more than one occasion that it did not aim at political control and expressed "its firm purpose to allow the character of the enterprise inaugurated by M. de Lesseps to remain an essentially private one."¹⁵ The failure of the de Lesseps scheme relieved the United States of the danger apprehended from the construction of a canal under French patronage.

Meanwhile there was no serious interruption of the transit until April, 1885, when the Colombian government, through Mr. Scruggs, the United States minister resident at Bogota, confessed its inability during the civil war then being waged, to protect the route and called upon the United States to fulfill its obligations under Article 35 of the treaty of 1846. President Cleveland at once sent a

¹⁴For. Rel., 1881, 537.

¹⁵For. Rel., 1880, 385. For. Rel., 1881, 440.

body of troops to the isthmus with instructions to confine their action to protecting the line of the railroad from interruption or violence. As soon as peace was re-established there the troops were withdrawn.¹⁶

The treaty now pending is too lengthy and raises too many new questions to admit of a general discussion of its provisions in the limited space at our command. As far as the guaranties of the United States are concerned, however, the new treaty does not materially alter the situation. The third article declares that "all the stipulations contained in Article 35 of the treaty of 1846-48 between the contracting parties shall continue and apply in full force" to the canal zone, and "the United States shall continue to guarantee the neutrality thereof, and the sovereignty of Colombia thereover, in conformity with the above-mentioned Article 35 of said treaty."

As regards the conditions of intervention this treaty is more specific than the earlier one. By the terms of Article 23, Colombia agrees to provide whatever armed forces may be necessary to protect the canal, "but if the government of Colombia can not effectively comply with this obligation, then, with the consent of or at the request of Colombia, or of her minister at Washington, or of the local authorities, civil or military, the United States shall employ such force as may be necessary for that sole purpose; and as soon as the necessity shall have ceased, will withdraw the forces so employed." Under exceptional circumstances, however, the United States is authorized to act without obtaining beforehand the consent of Colombia. In this case immediate notice shall be given to Colombia of the measures adopted, and as soon as sufficient Colombian forces shall arrive those of the United States shall retire. These provisions leave the employment of armed forces largely in the discretion of the United States.

¹⁶ For. Rel., 1885, 209. "Messages and Papers," VIII, 326.